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E-News from the EU Tax Centre

Issue 184 – October 5, 2023

KPMG's EU Tax Centre compiles a regular update of EU and international tax developments that can have both a domestic and a cross-border impact, with the aim of helping you keep track of and understand these developments and how they can impact your business.

Today's edition includes updates on:

- **EU General Court:** Decision on the Belgian "excess profit" tax ruling
- **OECD:** Public comments received on Amount B consultation document (Pillar One)
- **Austria:** Release of updated DAC6 guidance
- **Bulgaria:** Legislative proposal to implement minimum taxation (Pillar Two)
- **France:** Legislative proposal to implement minimum taxation (Pillar Two)
- **Ireland:** Public consultation regarding participation exemption
- **Latvia:** Implementation of Public CbyC Reporting
- **Romania:** Draft law proposes minimum turnover tax for large companies
- **United Arab Emirates:** Corporate tax guidelines published
- **United Kingdom:** Amendments to proposed minimum tax legislation (Pillar Two)

Infringement Procedures and CJEU Referrals

CJEU Referrals

CJEU referral on the Romanian windfall tax for electricity producers

On June 27, 2023, the Romanian Court of Appeal Bucuresti made a reference to the Court of Justice of the European Union (CJEU) concerning the compatibility of the Romanian windfall tax for electricity producers with EU law. The case is C-391/23 and the plaintiff is a Romanian producer of renewable energy.

Starting November 2021, Romania introduced a windfall profit levy applicable to certain energy producers. The levy was charged at a rate of 80 percent on the average selling price of electricity in a month that exceeded RON 450 (approximately EUR 9.4) per MWh. Certain producers were exempted from the scope of the levy. For more details see E-News Issue 161.

Among others, the referring court seeks clarifications on whether, by imposing the tax only on certain categories of producers:

- the Romanian rules infringe the freedom of establishment and the free movement of services;
- the rules amount to State aid granted to exempt persons, which should have been notified to the European Commission.

State aid

EU General Court

Decision on the Belgian “excess profit” tax ruling

On September 20, 2023, the General Court of the CJEU (General Court or the Court) gave its decision in the Belgian “excess profit” tax ruling system case (T-131/16 RENV).

Belgian tax legislation provided for the possibility for a Belgian company that is a member of a multinational group to make unilateral downward adjustments to its taxable base for “excess profits”. A ruling had to be requested prior to making such a downward adjustment. On January 11, 2016, the Commission concluded that the Belgian ruling practice on allowing such a downward adjustment constituted an unlawful aid scheme.

Following several proceedings before the EU courts, the General Court rejected Belgium’s plea that the reference system[1] identified by the Commission should have included the excess profit exemption scheme. In the Court’s view, the Commission was correct in determining that the reference system should be the ordinary Belgian corporate income tax system, which aimed to tax the profits of all Belgian companies. The General

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[1] It is settled CJEU case-law that the analysis of whether a national measure constitutes unlawful State aid requires several steps, including for the EC to demonstrate that the measure conferred a selective advantage on the beneficiary. For this purpose, the Commission is tasked with (i) identifying the reference system, i.e. the ordinary tax system applicable in that Member State in a factually comparable situation (by reference to the objectives of that regime), and (ii) demonstrating that the disputed tax measure – in this case the tax rulings – is a derogation from that ‘normal’ system.

Court also found that the Commission was correct to state that the scheme under dispute was selective in that it differentiated between companies that were in a comparable factual and legal situation. Additionally, in the Court's view, the scheme at hand resulted in a distortion of competition and was not justified by the nature or general scheme of the Belgian tax system.

In light of the above, the General Court concluded that the Commission did not make an error of law when concluding that the tax rulings under dispute represented unlawful State aid. The General Court also dismissed 29 separate appeals brought by the beneficiaries of the excess profit rulings against the EC's State aid decision.

For more information, please refer to Euro Tax Flash Issue 523.

Decision on the Spanish amortization of financial goodwill system for indirect acquisitions

On September 27, 2023, the General Court of the CJEU gave its decision in a series of cases concerning the compatibility of the Spanish rules on financial goodwill amortization for indirect acquisitions with EU State aid rules.

The measure at issue allows companies taxable in Spain to amortize for tax purposes the financial goodwill resulting from the acquisition of a shareholding in a foreign company, under certain conditions. On the other hand, acquisitions of Spanish companies do not benefit from the same amortization rules. In 2009 and 2011, the European Commission issued two decisions (2011/5/EC and 2011/282/EU) in which it concluded that this difference in treatment constitutes unlawful State aid (the Initial Decisions). Nonetheless, the Commission allowed the rules to continue to apply, subject to specific conditions, in certain cases (based on the principle of protection of legitimate expectations).

In parallel, on March 21, 2012, the Spanish authorities issued a binding opinion confirming that, in their view, the scheme also applied to financial goodwill arising from indirect acquisitions of shareholdings in non-resident companies. The Commission concluded that the interpretation issued by the Spanish authorities represented (new) unlawful State aid and ordered its recovery (2014 Decision). The EC did not allow for any exemptions from this order, based on legitimate expectations. Spain and several beneficiaries appealed the Commission's 2014 Decision.

On September 27, 2023, Court ruled that the wording of the Initial Decisions indicate that the EC examined the financial goodwill scheme as a whole – covering both direct and indirect acquisitions. The General Court noted that, whilst the Initial Decisions acknowledged the incompatibility of the financial goodwill scheme with EU law, certain aid was exempt from recovery based on the principle of legitimate expectations. On the other hand, the 2014 Decision failed to recognize that beneficiaries that performed indirect acquisitions also had legitimate expectations that the scheme was lawful. In the Court's view, since the Initial Decisions covered both direct and indirect shareholdings, the EC's 2014 Decision amounted to a withdrawal of lawful decisions. In other words, the Initial Decisions allowed certain companies benefiting from the scheme an individual right not to reimburse certain unlawful aid. However, the contested decision later withdrew this right as far as it concerned indirect acquisitions. The Court also took the view that the EC's actions infringed the principle of legal certainty and the principle of safeguarding legitimate expectations.

In light of the above, the General Court upheld the plaintiffs' appeal and annulled the EC's Decision.

For more information, please refer to Euro Tax Flash Issue 525.

EU Institutions

Council of the EU

EU position on tax cooperation at the United Nations

On September 23, 2023, the Council of the EU and the European Commission submitted jointly a position on behalf of the European Union and its Member States on tax cooperation at the United Nations (UN). Key takeaways include:

- The EU and its Member States support the development of a fair and effective international tax system for sustainable development, with a focus on capacity building support for developing countries.
- They are committed to the ongoing work of the OECD/G20 Inclusive Framework, which aims to establish ambitious reforms to the international tax order, including the two-pillar solution.
- The EU and its Member States support the work ongoing at the level of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum), aimed at fighting against offshore tax evasion and establishing a global standard for transparency in tax matters.
- They consider that options 1 (legally binding multilateral convention on tax) and option 2 (legally binding framework convention on international tax cooperation) proposed in the UN Secretary General's report would risk leading to duplication of ongoing or completed international work linked to the existing global tax framework. However, they could consider option 3, i.e. working at the UN on a non-binding multilateral agenda for coordinated actions.
- The EU and its Member States support efforts to enhance inclusiveness of the broad membership of the OECD/G20 Inclusive Framework and the Global Forum.
- They will continue to engage in this debate openly and constructively to find a common and mutually reinforcing way forward at the global level.

European Commission

KPMG submits response to public consultation on FASTER

On September 17, 2023, KPMG[2] member firms in the EU submitted a response to the European Commission's (EC) public consultation on the "Faster and Safer Relief of Excess Withholding Taxes (FASTER)" initiative.

KPMG supports the EC's initiative to address current inefficiencies in withholding tax relief procedures across the Union, which hinder the functioning of the EU's capital markets. The submission intends to build from the key issues KPMG has observed in practice and to set out certain high-level recommendations on how to

[2] The comment paper was produced on behalf of KPMG member firms located in the EU forming part of KPMG's Europe, the Middle East & Africa (EMA) region. Throughout the submission, "we", "KPMG", "us" and "our" refer to the network of independent member firms operating in the EU.

mitigate a number of issues that might arise in practice. There are several general points that apply across these sections, including:

- We welcome the EC's efforts to move towards a standardized and digitalized withholding tax relief system across the EU.
- We support the proposed introduction of a Relief at Source (RAS) system and welcome the proposed option to introduce a common quick refund system to complement the RAS process, and act as a backstop for cases where WHT RAS is not achieved.
- We find that lessons and best practices can be drawn from existing systems of relief that are effective in some Member States. In this regard, we have provided several examples throughout our contribution of the experience of systems in different Member States.
- We also highlight the need to ensure that the obligations of both EU and non-EU (i) cross-border investors and (ii) CFIs are not overly burdensome, to ensure that the procedural objectives of the FASTER proposal are realized.

For more information, please see Euro Tax Flash Issue 524.

European Parliament

FISC sub-committee hearing on new EU common system in the area of withholding tax

On September 19, 2023, the European Parliament's Subcommittee on the Tax Matters (FISC) held a public hearing on "New EU common system for the avoidance of double taxation and prevention of tax abuse in the area of withholding taxes". The aim of the discussion was to gather insights and opinions from experts on the European Commission's (EC) "Faster and Safer Relief of Excess Withholding Taxes (FASTER)" initiative. Key topics discussed included:

- obstacles for cross-border investments and free movement of capital;
- benefits of the digitalized withholding tax relief system in respect of verification of the tax residence of the taxpayer entitled to tax relief;
- clarification of the notion of the beneficial owner (not addressed in the proposal) and difficulty of agreeing on a harmonized definition;
- registration of certified financial intermediaries and creation of national registers.

The EC's representative, Reinhard Biebel (Head of the unit for direct tax policy and cooperation at the Directorate-General for Taxation and Customs Union), noted that an agreement on a beneficial ownership definition is a long-standing issue that could not be resolved over the past period and will probably not be resolved in the near future. As such, Mr Biebel noted that the Commission decided not to include the definition of beneficial ownership in the FASTER proposal with a view to timely reaching consensus on streamlining investor processes and preventing potential abuses in the area of withholding tax.

For more details, please refer to the European Parliament's press release.

OECD and other International Institutions and Research Centers

Organisation for Economic Cooperation and Development – OECD

Public comments received on Amount B consultation document (Pillar One)

On September 20, 2023, the OECD released comments received on the three main design elements of Amount B under Pillar One (for previous coverage, please refer to E-News Issue 181).

The OECD received a total of 76 responses, including a response letter submitted by KPMG International, which provides for the following key comments:

- KPMG supports the objective of simplifying and streamlining the application of the arm's length principle to in-country baseline marketing and distribution activities.
- The consultation document highlights numerous areas of continued disagreement, such as the two alternative approaches to scope, the treatment of digital goods, and the multiple approaches under consideration to address perceived differences in returns between geographies. KPMG is concerned that it will prove difficult to address these differences, or that differences may be addressed through ambiguous drafting that will lead to disputes when taxpayers seek to apply Amount B.
- KPMG believes that certainty around the application of Amount B is critical, both with respect to scoping and with respect to the application of the pricing mechanism. As regards scoping, the Amount B scope should be as broad as practically possible to maximise the simplification benefits for both taxpayers and tax administrations.
- KPMG considers it essential that alongside a conceptual agreement on Amount B, a tax certainty process is designed and implemented through which members can collectively review and approve the application of the Amount B pricing methodology by specific taxpayers. This process could also be made available to taxpayers that do not meet the criteria to apply Amount B, but which have a standardised approach for pricing baseline marketing and distribution activities.
- KPMG strongly supports the application of Amount B as an elective safe harbour for taxpayers, which they would elect into on an entity-by-entity basis. To the extent Amount B is not implemented as an elective safe harbour then we suggest that the framework only apply to tax years beginning 12 months after the IF publishes final guidance on Amount B to provide taxpayers with sufficient time to prepare for its introduction.
- KPMG considers that there should be greater transparency of the data that underlies the pricing matrix set using the global database and any alternative pricing approaches under consideration.
- KPMG remains concerned about the complexity of the proposed approach, which will reduce the certainty benefits that Amount B provides to businesses, but also risks limiting the benefits of this proposed simplification for low-capacity jurisdictions that Amount B is intended to support. For this reason, we continue to see benefits in simplifying Amount B, such as by limiting the number of pricing approaches.

For more information, please refer to KPMG's Tax News Flash and the OECD release.

G20 leaders’ declaration considers progress of the OECD work on taxation and transparency

On September 10, 2023, the G20[3] leaders issued a declaration following their meeting in New Delhi. Key takeaways in relation to the OECD’s work on taxation and transparency (as outlined in the OECD Secretary-General Tax Report) include:

- commitment to the swift implementation of the OECD two-pillar solution and endorsement of the actions taken by different nations in enacting the GloBE rules;
- call to address the remaining concerns related to the pending Amount A multilateral convention (MLC) at the earliest to enable ratification in the latter half of 2023, and to conclude the work on Amount B by the close of 2023;
- call for synchronized efforts to build capacity and ensure the effective implementation of the OECD two-pillar solution by providing in particular support and technical guidance to developing nations;
- acknowledgment of the 2023 update to the G20/OECD roadmap concerning developing nations and global taxation;
- call for prompt enforcement of the Crypto-Asset Reporting Framework ("CARF") and adjustments to the CRS as well as for the Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum") to outline a fitting and coordinated schedule for initiating exchanges among concerned jurisdictions;
- acknowledgment of the OECD's report on enhancing international tax transparency on real estate and the Global Forum report on facilitating the use of tax-treaty-exchanged information for non-tax purposes.

BEPS Action 13 (Country-by-Country Reporting) peer review report issued

On September 25, 2023, the OECD issued the sixth annual peer review report for the BEPS Action 13 minimum standard requiring multinational enterprises to report to tax authorities revenues, profits, taxes paid and certain measures of economic activity on a Country-by-Country (CbyC) basis. The review covered 136 jurisdictions. Key takwaways include:

- Over 110 jurisdictions have a domestic legal framework for non-public CbyC reporting in place. In addition, a number of jurisdictions have final legislation approved that is awaiting official publication.
- 22 jurisdictions have received a general recommendation to put in place or finalise their domestic legal or administrative framework.
- 30 jurisdictions received one or more recommendations for improvements to specific areas of their framework.
- 89 jurisdictions have multilateral or bilateral competent authority agreements in place.
- 91 have undergone an assessment by the Global Forum concerning confidentiality and data safeguards in the context of implementing the AEOI standard, and did not receive any action plan.
- 73 jurisdictions have provided detailed information, enabling the Inclusive Framework to obtain sufficient assurance that measures are in place to ensure the appropriate use of CbyC reports.

It is important to note that the Code of Conduction Group (Business Taxation) will take into account the peer review recommendations when updating the EU list of non-cooperative jurisdiction (section 3.2) later this month. For more information, please refer to Euro Tax Flash Issue 506.

The next peer review report is expected to be issued in the third quarter of 2024.

For more information, please refer to the OECD release.

African Tax Administration Forum – ATAF

Updated guidance for domestic minimum top-up tax implementation (Pillar Two)

On September 29, 2023, the African Tax Administration Forum (ATAF) released updated guidance to assist African countries that wish to enact a domestic minimum top-up tax (DMTT) – for previous coverage please refer to E-News Issue 170.

The updated guidance includes three different alternative models, which a country could consider depending on which is most appropriate in its own legislative context.

- *Approach 1:* brief skeleton provisions necessary for enacting a DMTT in the primary legislation that is enacted through a parliamentary process;
- *Approach 2:* "reference model" that would enact a DMTT by incorporating the GloBE rules by reference, with only the necessary modifications to make it appropriate to the DMTT context;
- *Approach 3:* long form version of a DMTT based on the GloBE rules, with all of the rules contained in the primary legislation that is enacted through a parliamentary process.

The updated guidance also provides explanatory notes and practical guidelines taking into account the OECD's Administrative Guidance. The release further notes that additional provisions may be added to the guidance as discussions continue in the Inclusive Framework.

International Accounting Standards Board – IASB

Adoption of IFRS amendments for SMEs – Temporary relief from deferred tax accounting for Pillar Two

On September 29, 2023, the International Accounting Standards Board (IASB) approved amendments to the International Financial Reporting Standard (IFRS) for small and medium-sized enterprises (SMEs) in light of the implementation of the OECD GloBE rules (Pillar Two) – for previous coverage, please refer to E-News Issue 178.

The amendments provide a mandatory temporary relief from deferred tax accounting for Pillar Two taxes (except deferred taxes under domestic tax regimes) where the GloBE rules have been enacted or substantively enacted in a jurisdiction in which a group operates. In that case, companies would be required to disclose that they have applied the relief. In addition, affected SMEs would be required to disclose information that helps users of its financial statements to understand their exposure to Pillar Two income taxes at the reporting date. In periods when Pillar Two legislation is in effect, the SME would be required to provide separate disclosures of its current tax expense related to Pillar Two income taxes.

[3] The African Union (AU) has recently been made a permanent member of the G20. As a result, the permanent members of the G20 are now Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, South Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, United Kingdom and United States, along with the EU and the AU.

Affected SMEs are required to provide the disclosures for annual reporting periods beginning on or after January 1, 2023. The relief applies immediately and until the IASB decides either to remove it or to make it permanent.

For more information, please refer to the IASB press release.

Local Law and Regulations

Austria

Legislative proposal to implement minimum taxation (Pillar Two)

On October 3, 2023, the Austrian Ministry of Finance launched a public consultation on a draft bill to implement the OECD's Pillar Two Model Rules as set out under the EU Minimum Tax Directive.

The proposal closely follows the text of the EU Directive (for more details, please refer to Euro Tax Flash Issue 500) and incorporates certain items that were subsequently released by the OECD Inclusive Framework. Key features of the proposal include:

- *Income Inclusion Rule (IIR)/ Undertaxed Profits Rule (UTPR):* The IIR would apply for financial years starting on or after December 31, 2023. The UTPR would generally be applicable one year later, i.e. for financial year starting on or after December 31, 2024. However, the UTPR would apply for financial years starting on or after December 31, 2023 where the UPE of the group is located in an EU Member States that opted for the IIR and UTPR deferral (Article 50 of the Directive). The UTPR top-up tax would be collected in form of an additional top-up tax.
- *DMTT:* A DMTT would apply for financial years starting on or after December 31, 2023. According to the explanatory notes, the Austrian DMTT is generally designed to reach the qualified status under the Inclusive Framework peer review process (in accordance with the OECD QDMTT guidance) and to be eligible for the QDMTT Safe Harbour. As such, the DMTT would need to be imposed with respect to 100 percent of the Top-up Tax calculated for local Constituent Entities (i.e. it cannot be limited to a UPE's ownership percentage in the local Constituent Entities). Foreign covered taxes (e.g. CFC taxes) that would be allocated to Austrian Constituent Entities under the regular GloBE rules would need to be excluded for Austrian DMTT purposes. In addition, the Austrian DMTT would need to be computed based on the UPE's Financial Accounting Standard except where it is not reasonably practicable to use such accounts.
- *Safe harbors:* The draft incorporates the agreed transitional CbC Reporting Safe Harbour, the transitional UTPR Safe Harbour, as well as the Safe Harbour for Non-Material Constituent Entities. In addition, the draft provides for a QDMTT safe harbor rule (i.e. IIR and UTPR Top-up Tax is deemed to be zero in Austria in relation to other jurisdictions that apply a QDMTT). The QDMTT safe harbor election refers to stricter eligibility requirements and applies the "switch-off rule" as defined in the OECD's July Administrative.
- *Additional OECD guidance:* The draft bill incorporates into the legislative text a number of additional elements of the OECD Administrative Guidance that adapt the OECD Model Rules / EU Directive rules (for example, special methodology to allocate taxes arising under blended CFC tax regimes).

- *Administration:* Each Constituent Entity would be required to file a GloBE Information Return (GIR) within 15 months after the end of the Reporting Fiscal Year (18 months for the transitional year). However, the draft also provides the option to transfer the obligation to file the GIR to another Constituent Entity (along with the requirement to notify the local tax authorities where the GIR has been filed by a foreign Constituent Entity). In addition, a top-up tax return and the payment of any top-up tax due must be filed and paid within 24 months after the end of the calendar year in which the fiscal year ends. According to the draft, the top-up tax liability will be centralized in one of the Austrian Constituent Entities. The draft provides for the option to identify a local group member that is responsible for filing the local tax return and to pay the top-up tax on behalf of all minimum tax group members. Where no such group member has been identified, the obligation would be passed on to the top domestic parent or the economically most significant local group member. Since the tax liability is thereby centralized, it is legally required to conclude an internal agreement between the Austrian Constituent Entities on how to split up this centralized tax liability amongst them, based on their individual "responsiblity" for the top-up tax that has to be paid.
- *Penalties:* Failures to comply with the administration of the GloBE rules can be sanctioned with a fine of up to EUR 100,000 (EUR 50,000 in case of gross negligence).

Comments on the draft legislative decree are requested by October 20, 2023.

For more information, please register for a dedicated webcast session hosted by KPMG in Austria. For a state of play of the implementation of Pillar Two, please refer to KPMG's dedicated implementation tracker.

Release of updated DAC6 guidance

On September 12, 2023, the Austrian Ministry of Finance issued updated guidance on the application of the DAC6 reporting requirements for cross-border arrangements in Austria. Key updates include:

- an example providing clarifications as to whether a person may qualify as a secondary intermediary depending on the availability of relevant information;
- clarification that no obligation for an intermediary to notify other intermediaries about DAC6 applies where the intermediary is subject to the professional privilege exemption (in accordance with the CJEU decision of December 8, 2022 – for more details, please refer to Euro Tax Flash Issue 497);
- clarification that (i) a tax advantage is to be measured by comparing the tax burden that would exist without the arrangement with the tax savings that would result from the arrangement and (ii) that a tax advantage may be considered to be a main benefit where the arrangement would not be implemented without such tax advantage, or at least not in the same way;
- clarification that the main benefit test does not require that an arrangement violates legal provisions or results in tax avoidance;
- clarification that the reportable value of the arrangement refers to the value of the arrangement as a whole and not (only) to the value of the tax advantage itself. Where an arrangement includes multiple transactions, these transactions would need to be reported cumulatively (i.e. not every individual transaction). In that case, the disclosure would need to disregard the value that is offset through mutual transactions;
- clarifications in respect of hallmarks B.2 (conversion into lower-taxed income), B.3 (circular transactions), E.1 (unilateral safe harbour rules), E.2 (transfer of intangibles) and E.3 (cross-border transfer of significant functions, assets and/or risks).

Bulgaria

Legislative proposal to implement minimum taxation (Pillar Two)

On September 26, 2023, the Bulgarian Ministry of Finance launched a public consultation on a draft bill to implement the OECD's Pillar Two Model Rules as set out under the EU Minimum Tax Directive.

The minimum tax rules would be incorporated into the existing local corporate income tax framework and would closely follow the text of the EU Directive. Key features of the proposal include:

- *IIR/ UTPR:* The IIR would apply for financial years starting on or after December 31, 2023. The UTPR would generally be applicable one year later, i.e. for financial year starting on or after December 31, 2024. The UTPR top-up tax would be collected in form of an additional top-up tax.
- *DMTT:* A DMTT would apply for financial years starting on or after December 31, 2023. According to the explanatory notes, the Bulgarian DMTT is generally designed in accordance with the general GloBE rules subject to certain exception allowed for under the OECD QDMTT guidance (e.g. no application of the substance-based income exclusion and the de-minimis exclusion). In addition, the DMTT would need to be computed based on IFRS as adopted by the EU or the national accounting standard (where the consolidated financial statement of the Ultimate Parent Entity are prepared under acceptable financial accounting standards other than IFRS). It would need to be imposed with respect to 100 percent of the Top-up Tax calculated for local Constituent Entities (i.e. it cannot be limited to a UPE's ownership percentage in the local Constituent Entities).
- *Safe Harbors:* The draft provides for a QDMTT safe harbor rule (i.e. IIR and UTPR Top-up Tax is deemed to be zero in Bulgaria in relation to other EU Member States that apply a QDMTT). The QDMTT safe harbor would require a QDMTT to be computed in accordance with the UPE's acceptable financial accounting standard or IFRS as adopted by the EU. The draft also incorporates the agreed transitional CbyC Reporting Safe Harbour. The transitional UTPR Safe Harbour is not yet reflected in the draft.
- *Administration:* Each Constituent Entity would be required to file a GIR as well as a local tax return within 15 months after the end of the Reporting Fiscal Year (18 months for the transitional year). Top-up tax would need to be paid within the same deadlines. The draft also provides the option to transfer the obligation to file the GIR to another Constituent Entity (along with the requirement to notify the local tax authorities where the GIR has been filed by a foreign Constituent Entity).
- *Penalties:* Where the GIR or a local tax return for the DMTT is not submitted, filing is deemed inaccurate or taxpayers fail to comply with the notification requirements, penalties may apply of up to BGN 300,000 (approximately EUR EUR 153,000). The amount of penalties would depend on the type of compliance failure and whether it is seen as a repeated violation.

Comments on the draft legislative decree are requested by October 26, 2023.

Finland

Public consultation on BEFIT, Transfer Pricing and Head Office Tax system Directive proposals

On September 15, 2023, the Finnish Ministry of Finance launched a public consultation regarding the implementation of three Council Directive proposals that were published by the European Commission on September 12, 2023. These proposals relate to the following:

- Council Directive on Business in Europe: Framework for Income Taxation (BEFIT);
- Council Directive on Transfer Pricing;
- Council Directive implementing a Head Office Tax System for SMEs (the HOT proposal).

The consultation period closed on September 29, 2023. For more details regarding the proposed Directives, please refer to Euro Tax Flash Issue 521 and Issue 522.

France

Legislative proposal to implement minimum taxation (Pillar Two)

On September 27, 2023, the French government submitted to the Parliament the 2024 Finance Bill including a proposal to implement the OECD's Pillar Two Model Rules as set out under the EU Minimum Tax Directive.

The minimum tax rules would be incorporated into the existing local corporate income tax framework and would closely follow the text of the EU Directive as well as subsequently released guidance agreed by the OECD/G20 Inclusive Framework. Key features of the proposal include:

- *IIR / UTPR:* The IIR would apply for financial years starting on or after December 31, 2023. The UTPR would generally be applicable one year later, i.e. for financial year starting on or after December 31, 2024. However, the UTPR would apply for financial years starting on or after December 31, 2023 where the UPE of the group is located in an EU Member States that opted for the IIR and UTPR deferral (Article 50 of the Directive). The UTPR top-up tax would be collected in form of an additional top-up tax.
- *DMTT:* A DMTT would apply for financial years starting on or after December 31, 2023. For French IIR and UTPR purposes, the DMTT would be considered a QDMTT. The DMTT would generally be allocated among the Constituent Entities located in France with reference to the proportion of the Constituent Entity's GloBE income to the aggregated GloBE income of all Constituent Entities in France.
- *Safe harbors*: The draft incorporates the agreed transitional CbyC Reporting Safe Harbour and the transitional UTPR Safe Harbour. In addition, the draft provides for a QDMTT safe harbor rule (i.e. IIR and UTPR Top-up Tax is deemed to be zero in France in relation to other jurisdictions that apply a QDMTT). The QDMTT safe harbor would require a QDMTT to be computed in accordance with the UPE's acceptable financial accounting standard or IFRS as adopted by the EU.
- *Additional OECD guidance:* The draft bill incorporates into the legislative text a limited number of additional elements of the OECD Administrative Guidance that adapt the OECD Model Rules / EU Directive rules (for example, election to exclude income attributable to debt releases under certain conditions, election to include portfolio shareholding income, application of an Excess Negative Tax Expense carry forward).
- *Administration:* Each Constituent Entity would be required to file a GIR as well as a local tax return

15 months after the end of the Reporting Fiscal Year (18 months for the transitional year). The same deadlines would apply for settling the top-up tax liability. An option is provided to transfer the obligation to file the GIR to another Constituent Entity (along with the requirement to notify the local tax authorities where the GIR has been filed by a foreign Constituent Entity). In addition, the draft provides for the option to identify a local group member that is responsible for filing the local tax return and to pay the top-up tax on behalf of all minimum tax group members. Furthermore, the government would be empowered to adopt legislative measures to further clarify the administrative requirements (including the form of the GIR and local tax return).

- *Penalties:* Where the GIR or local tax return is not submitted or where the filing is delayed, a penalty of EUR 100,000 may apply. Other failures to comply with the reporting requirements may be sanctioned with a fine of EUR 50,000. The total amount of fines for Constituent Entities within the same local group cannot exceed EUR 1,000,000 in a fiscal year.

For a state of play of the implementation of Pillar Two, please refer to KPMG's dedicated implementation tracker.

Release of updated DAC6 guidelines (hallmark D.1.b)

On September 13, 2023, French tax authorities published updated guidelines in relation to the DAC6 reporting requirements for cross-border arrangements in France. More specifically, the update provides further clarifications on the scope of hallmark D.1.b (avoidance of AEOI - transfer of Financial Account Information).

The guidelines provide the example of an individual based in Germany with a French bank account and regular cash transfers to a bank account in Algeria (a jurisdiction not subject to CRS). The updated guidelines clarify that no DAC6 reporting obligation is triggered where this does not involve any transfers of financial accounts, assets, or payments that form part of a reportable arrangement. Moreover, the updated guidelines note that both the account holder and the financial institution remain subject to the reporting obligations for DAC2, CRS, and AML purposes.

Ireland

Public consultation regarding participation exemption

On September 14, 2023, the Irish Department of Finance launched a public consultation regarding a roadmap for the introduction of (i) a participation exemption for foreign-sourced dividends, and (ii) the next steps towards the planned introduction of a participation exemption for foreign branch profits.

Specifically, the roadmap document outlines a timeline for the introduction of the participation exemption on foreign sourced dividends such that a first Feedback Statement will be published by the end of March 2024 (followed by a second in July 2024 if required). It is then proposed that legislation regarding same would be included in Finance Bill 2024, to come into effect in 2025.

Comments are invited regarding the proposals until December 13, 2023. For more information, please see a press release by the Irish Department of Finance.

Latvia

Implementation of Public CbyC Reporting

On September 27, 2023, the bill implementing the Public CbyC Reporting Directive in Latvia was published in the Official Journal. Key takeaways include:

- The provisions of the Latvian public CbyC bill are closely aligned with the text of the Directive.
- Latvia adopted the "safeguard clause", i.e. to allow in scope groups to temporarily omit for a maximum of five years information that would cause a significant disadvantage to the companies concerned, provided they can justify the reason for the omission.
- Latvia opted for the website publication exemption (the Latvian reporting entity is exempt from publishing the CbyC report on their website if the report is published on the website of the local commercial register and is available free of charge).

The public disclosure rules will apply to financial years starting on or after June 22, 2024.

For a state of play of the implementation of the EU Public CbyC Reporting Directive, please refer to KPMG's dedicated implementation tracker.

Netherlands

Direct tax measures in 2024 Tax Plan

On September 19, 2023, the Dutch government presented the 2024 Tax Plan to the Lower House of Parliament. Key corporate tax measures include:

- Amendments to the interest deduction limitation rules such that, as of 2024, the deduction of interest expenses on the payables to group entities would in future not be limited, subject to certain conditions.
- Amendments to the Dutch Fiscal Investent Institution (FBI) regime such that, as of 2025, an FBI may no longer directly invest in Dutch property or in rights to which the property is subject. If they do this, they would lose their FBI status.
- Amendments to the exempt investment institution (VBI) regime such that, as of 2025, the definition of investment institution or UCITS would be aligned with investment institutions eligible for the VBI regime. The proposed change to the VBI regime aims to restrict access to the VBI regime to investment funds and UCITS that offer participation rights to a broad public or to institutional investors.
- Reassessment of the Legal Forms Tax Qualification Policy for (foreign) legal entities for Dutch tax purposes including the codification of the Dutch qualification policy for foreign legal entities on the basis of the legal form comparison method, which would be supplemented by two additional methods (the fixed method and the symmetrical method) if the legal form of a foreign entity is not comparable to that of an entity incorporated or established under Dutch law. These provisions would be effective from 2025.

For more details, please refer to a report prepared by KPMG in the Netherlands.

Romania

Draft law proposes minimum turnover tax for large companies

On September 19, 2023, the Romanian Ministry of Finance released draft legislation outlining new fiscal budgetary measures. Key proposed direct tax measures include:

- A minimum turnover tax of 1 percent is proposed for companies with a turnover exceeding EUR 50 million. The minimum turnover tax would only apply in cases where the corporate income tax payable, determined as per the general provisions of the Romanian Tax Code, is less than the minimum turnover tax amount payable.
- A supplementary tax (1 percent of turnover) would apply for banks. The tax would not be deductible for tax purposes.
- The turnover tax applicable to companies benefiting from the micro-enterprises' regime would be increased to 3 percent (from the current 1 percent) for companies with revenues above EUR 60,000. The same increased 3 percent rate would apply for micro-enterprises operating in certain fields, irrespective of the revenues derived.

The draft legislation has been challenged before the Romanian Constitutional Court. Therefore, additional changes could occur. If enacted, the provisions would be effective from January 1, 2024.

Saudi Arabia

Publication of Ministerial resolution in Official Gazette

On September 15, 2023, the Saudi Arabian Ministry of Finance published Ministerial Resolution No. 25 in the Official Gazette. Key features include:

- Expenses allowable for deduction from taxable income (loan interests and contribution to retirement funds).
- WHT rates for payments on certain services (technical, consulting, telecommunication at 5 percent) and payment definitions (airline tickets). Specifically, the amendments have resulted in a reduction in the withholding tax rate from 15 percent to five percent on payments to head offices or related parties for technical or consultancy services or international telecommunication services.
- The role of Zakat, Tax and Customs Authority (ZATCA) in supporting Zakat payers in fulfilling their obligations, and the mandate to follow and apply its guidelines and bulletins.

For more details, please refer to KPMG's Tax News Flash.

United Arab Emirates

Corporate tax guidelines published

On September 11, 2023, the Federal tax authority of the UAE released a General Guide for its Corporate tax regime which shall apply to tax periods commencing on or after June 1, 2023.

The document aims to provide general guidance on corporate tax in the UAE, including:

- an overview of the main corporate tax rules and procedures (e.g. determination of corporate tax base, determining corporate tax rate, filing returns, etc.); and
- assistance with addressing the most frequently asked questions by businesses.

United Kingdom

Amendments to proposed minimum tax legislation (Pillar Two)

On September 27, 2023, the UK government proposed further amendments to the recently enacted Finance (No. 2) Act 2023 (for previous coverage, please refer to E-News Issue 179) in order to align UK legislation with the GloBE Model Rules, Commentary, and Administrative Guidance agreed by the OECD/G20 Inclusive Framework. Key takeaways include:

- *UTPR:* the draft introduces the UTPR, which would be collected in form of an additional top-up tax levied directly on UK constituent entities in an amount equal to the UTPR top-up tax amount allocated to the UK. The UK portion would be allocated between UK constituent entities in proportion to the employees and tangible fixed assets of each entity. The draft further proposes the introduction of an election that allows a group to identify a single constituent entity liable for the entire UK portion of the UTPR top-up tax. An exclusion from the UTPR would apply for groups in the initial phase of international activity.
- *DMTT:* the draft provides special provisions for cases where DMTT applies before the Pillar Two rules (for example, before the group is in scope of another jurisdiction's IIR or UTPR). In that case, the transition year for DMTT would reset when the GloBE rules subsequently apply to the Constituent Entities. The rules clarify how deferred tax liabilities, collective additional amounts and special loss deferred tax assets arising in the interim would need to be treated.
- *Safe harbors:* the draft proposes the introduction of the transitional UTPR Safe Harbour as detailed in the OECD's July Administrative Guidance. In addition, the draft provides for a QDMTT Safe Harbour election (i.e. IIR and UTPR Top-up Tax is deemed to be zero in the UK in relation to other jurisdictions) where a QDMTT is applied that is accredited for the purposes of the election and that does not meet certain disqualifying conditions that would trigger the application of a "switch-off rule". The draft amendments further introduce a non-material constituent entity safe harbor election which can be made on an entity-by-entity basis and can apply where an entity is not included in the consolidated financial statements on the grounds of size or materiality.
- *Additional OECD guidance:* the draft incorporates into the legislative text additional elements of the OECD July Administrative Guidance that adapt the OECD Model Rules (e.g., treatment of marketable transferrable tax credits, allocation of tax credits under tax equity partnerships, calculation of eligible payroll costs and eligible tangible assets for the purposes of the substance-based income exclusion, updated rules on currency conversions).
- *Additional amendments:* the draft also provides for a number of further refinements to the enacted legislation (e.g. treatment of partnerships, treatment of Joint Ventures, definition of terms such as "revenue").

Comments on the draft amendments are requested by October 25, 2023.

For more details, please refer to a report prepared by KPMG in the UK and HMRC's explanatory notes.

KPMG Insights

Illustrative disclosures – Guide to annual financial statements

KPMG's 2023 guides to annual financial statements are now available. They comprise Illustrative disclosures and a Disclosure checklist in accordance with IFRS Accounting Standards.

These updated guides reflect standards in issue at August 31, 2023 that are required to be applied by a company with an annual reporting period beginning on 1 January 2023.

In particular, they illustrate amendments to:

- IAS 12 *Income Taxes* relating to the initial recognition exemption and Pillar Two top-up taxes; and
- IAS 1 *Presentation of Financial Statements* relating to disclosure of material rather than significant accounting policies. Please also refer to our high-level visual guide for further guidance.

For more information, please refer to a dedicated KPMG web article.

EU Financial Services Tax Perspectives

On September 27, 2023, KPMG held a new EU financial services tax perspectives session as part of the Future of Tax & Legal webcast series.

Countries and territories across the European Union (EU) and Europe continue to operate in a significantly unsettled environment. As geopolitical tensions persist, together with rising interest rates and spiraling inflation, there is a great need for financial stability and operational resilience. Coupled with the continuing rapid digital transformation and increasing compliance challenges financial services institutions should remain competitive in an ever-changing environment.

So, what is on the horizon? Will the tax landscape in Europe become even more volatile in the future? And what does this mean for financial services institutions?

A panel of KPMG tax specialists will share their insights on some of the latest developments impacting the financial services industry including:

- Update on European tax legislation enactment as it pertains to Financial Services groups including Pillar Two implementation survey and proposed Italian "windfall" bank tax.
- EU FASTER proposal, busting the myths – practical issues and challenges (including Beneficial Ownership concerns).
- Detail and insight on the expected EU BEFIT proposal to be released in September 2023.

For a replay of the session, please access the event page.

EU tax perspectives session

On October 4, 2023, KPMG held a new EU tax perspectives session as part of the Future of Tax & Legal webcast series.

European Union (EU) Member States and institutions continue to have full agendas that include the implementation of international initiatives and the advancement of upcoming EU-specific proposals. Against this backdrop a panel of KPMG specialists will share their insights on some of the latest developments from across the EU affecting multinational groups operating in Europe. The session will focus on:

- BEPS 2.0 in the EU: state of play on the implementation of the EU Minimum Tax Directive (Pillar Two)
- Business in Europe: Framework for Income Taxation (BEFIT): Commission's proposal and the way forward
- Unshell (ATAD 3): state of discussions and what can be expected in the future
- Navigating the EU Public Country-by-Country Reporting Directive: implementation across the EU and practical insights
- Looking ahead: state of play and updates on other EU tax initiatives.

For a replay of the session, please access the event page.

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